IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 121

RICHARD O. J. MAYBERRY,

Petitioner,

v.

PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The majority and dissenting opinions of the Pennsylvania Supreme Court are reported at 434 Pa. 478, 255 A.2d 131 (1969) and are reproduced in the Appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment Eight to the Constitution of the United States of America:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

2. Amendment Fourteen to the Constitution of the United States of America:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. Pennsylvania Contempt Statute. Act of June 16, 1836, P.L. 784, § 23; Pa. Stat. Ann. tit. 17, § 2041 (1962):

> "The power of the several courts of this commonwealth to issue attachments and to inflict summary punishments for contempts of court shall be restricted to the following cases, to-wit:
>
> I. To the official misconduct of the officers of such courts respectively;
> II. To disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court;
> III. To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice."

QUESTIONS PRESENTED

I. Whether, in a serious criminal contempt case, founded upon alleged misbehavior in the presence of the court thereby obstructing the administration of justice, and prosecuted at the conclusion of the proceeding in which the charged contempts occurred, the defendant is entitled to the basic requisites of due process of law: notice of the charges and the opportunity to be heard in defense or mitigation.

II. Whether prosecution of a serious charge of criminal contempt against an unrepresented indigent defendant, who had not waived counsel, violates the right to counsel guaranteed by the Sixth and Fourteenth Amendments.

III. In the circumstances of this case, was petitioner entitled to have his criminal contempt charges heard by a judge other than the judge who presided over the trial out of which those charges arose?

IV. Whether the Pennsylvania criminal contempt statute, as applied to petitioner, is unconstitutionally vague.

V. Whether the 11 to 22 year sentence imposed upon petitioner for contumacious misbehavior in court constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution.

STATEMENT OF THE CASE

This is a State criminal contempt case, from Pennsylvania. Petitioner received a sentence of 11 to 22 years for misbehavior during a State criminal prosecution in which he was a defendant. The 11 to 22 year term is consecutive to the sentences received for the conviction of the crimes in the underlying prosecution.

On November 7, 1966, petitioner and two co-defendants were brought to trial in a criminal prosecution that would eventually last for all or part of twenty-two days. Defendants were charged with prison breach and with holding hos-

tages in a penal institution. Each of the defendants acted as his own counsel. The jury returned a verdict of guilty of both charges against all defendants on Friday evening, December 9, 1966, the twenty-first day of the trial. (Tr. 3209).* The following Monday, December 12, the defendants were brought before the court for sentencing. Prior to imposing sentences on the verdicts, the trial judge summarily pronounced the defendants guilty of criminal contempt and imposed the 11 to 22 year sentence upon petitioner. (Tr. 3219-3226). Contempt sentences were also imposed upon petitioner's co-defendants. (Tr. 3227-3237).

The contempt prosecution had not been preannounced. At no point during the trial and prior to that sentencing session did the court actually cite the petitioner for contempt or declare that a contempt prosecution would be initiated. There were some few occasions when the court characterized the defendant's behavior in terms of contempt. On the first such occasion, during the eighth day of the trial, the court indicated that he felt the defendants had shown contempt toward the court, but he expressly declined to say that he was holding them in contempt and declared that he would take care of that matter at a later stage. (Tr. 1264). On the seventeenth day, the court made a statement that petitioner was committing a contempt of court and had previously committed "innumerable contempts." (Tr. 2591). Later that same day, after adjournment, the court announced that the defendants had been performing "a three ring circus" and "the court does not intend to let you get away with it." (Tr. 2614). There were also references in passing to "contemptuous outbursts" (Tr. 2790), "contemptible display" (Tr. 3040), and "obviously contemptuous conduct" (Tr. 3095). At none of these occasions, however, did the trial judge indicate that formal criminal contempt charges would be brought against petitioner. No citation or rule to

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*References are to pagination in the typed Transcript of Proceedings in the trial court. The original paging is indicated in the Appendix.

show cause was issued. No hearing of any kind was conducted.

After the contempt sentences had been pronounced, petitioner attempted to speak to the court "concerning the contempt proceedings." (Tr. 3226). His effort was futile. The trial judge declined to hear him and continued to pronounce the sentences on the verdicts. At the conclusion of that, he directed that petitioner be removed from the courtroom. (Tr. 3227).

The trial court's method of fixing sentence in the contempt proceeding was *per diem*. He found that petitioner had committed one or more contempts on eleven of the previous twenty-one days of trial. Without regard to the quality or duration of the conduct involved, a uniform sentence of not less than one nor more than two years was fixed for each day.

As will be seen in the description of the conduct held to be contempt, there was a wide disparity in the types of behavior involved. Most were verbal sallies of brief duration, including for example petitioner's statements: "I ask Your Honor to keep your mouth shut while I'm questioning my own witness," (Tr. 1793; 3222); and "This is the craziest trial I have ever seen" (Tr. 2504; 3224). In two instances, a series of outbursts led the trial judge to have petitioner bound and gagged or to have him removed from the courtroom altogether. (Tr. 2917-2941, 2948-2950, 3018-3021; 3089-3094c; 3225-3226).

It is impossible in this statement of facts to recount the full course of events that occurred during those twenty-one days. The entire record is before the Court. It alone can reveal the extent to which petitioner's behavior influenced the conduct of his trial. We will focus here on the events cited by the trial judge in his statement finding defendants guilty of contempt.

FIRST CHARGE

Petitioner's first charge of contempt arose from the proceedings early in the first day of his trial. Court opened with a panel of jurors ready to be examined. (Tr. 4-5). Discussion ensued concerning the decision of the defendants to represent themselves and the role of appointed counsel as their advisers. (Tr. 5-25). During that colloquy, the trial judge indicated to one of petitioner's co-defendants, who was then at side bar, that there would be no side-bar conferences with the defendants during the rest of the trial. (Tr. 19-20). Petitioner came to side bar and was told that he, too, would be denied any future opportunity to address the court out of the hearing of the jury. (Tr. 26-29). The court declared that he had no objection to the defendants making a statement in open court. (Tr. 28).

Petitioner then took up the question of defense witnesses. The court had previously ruled that many witnesses requested by the defense would not be allowed. (Tr. 30-31). The court further declared that the defendant would not be permitted to read into the record what he intended to prove by those witnesses. (Tr. 33).

The number of peremptory challenges allowed to the three defendants was raised. (Tr. 35). The judge indicated that there would be no more such challenges permitted than would be allowed to a single defendant, and that the defendants were denied a severance. (Tr. 36, and see 49-50).

Petitioner asked that the courtroom be arranged so that the defendants could confer among themselves and with their legal advisers without being overheard by the prosecution. Evidently there was a single counsel table shared by both prosecution and defense. (Tr. 38-39).

Petitioner asked that the police officers be directed not to disclose to others anything they might overhear. (Tr. 39). The court declined to take any action. (Tr. 40).

Petitioner objected to the unusually large number of uniformed and armed police in the courtroom (Tr. 40-41). His objection was denied. (Tr. 41).

Lastly, petitioner asked to have the prosecution witnesses sequestered. This motion too was denied (Tr. 41).

Thereupon, the following exchange occurred (Tr. 41-42):

"MR. MAYBERRY: Your Honor, I object to all these overrulings.

"THE COURT: You automatically have an exception.

"MR. MAYBERRY: I would like to have a fair trial of this case and like to be granted a fair trial under the Sixth Amendment.

"THE COURT: You will get a fair trial.

"MR. MAYBERRY: It doesn't appear that I am going to get one the way you are overruling all our motions and that, and being like a hatchet man for the State.

"THE COURT: This side bar is over.

"MR. MAYBERRY: Wait a minute, Your Honor.

"THE COURT: It is over.

"MR. MAYBERRY: You dirty sonofabitch."

In the summary conviction of the petitioner for contempt, the trial judge described the first charge:

"Richard Mayberry, on November 10, 1966, you have committed a contempt of court by referring to the Court as a 'dirty S.O.B.'" (Tr. 3221). The stated date is in error. The incident quoted above took place on November 7, 1966. The sentence for this contempt was "separate and solitary confinement at labor . . . for a term of not less than one year nor more than two years . . ." (Tr. 3221).

SECOND CHARGE

The second charge was based upon an exchange that took place during the cross examination of Charles J. Carrothers, major of the guard at the correctional institution involved in the prison breach indictment. (Tr. 1187). This occurred

on the eighth day of the trial, shortly after the noon recess. (Tr. 1236). Cross examination was being conducted by Mr. Codispoti, a co-defendant. (Tr. 1194-1205, 1217-1265). Mr. Codispoti asked the witness about a conversation that took place between Codispoti and the warden shortly after the prison breach incident. (Tr. 1256-1258). The prosecutor objected and the court sustained the objection. The court declared: "I am going to prohibit you from asking any questions of things that occurred after June 27, 1965." (Tr. 1258). During a further exchange with Mr. Codispoti, the court said: "You are out of order, Mr. Codispoti. I don't want any outbursts like that again. This is a court of justice. You don't know how to ask questions." (Tr. 1259). Petitioner replied: "Possibly Your Honor doesn't know how to rule on them," and added: "You ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions." (Tr. 1259). The court responded: "Are you through? When your time comes you can ask questions and not make speeches." (Tr. 1259).

Petitioner was summarily sentenced to two years imprisonment for this statement. The court characterized it thus:

> "On November 18, 1966, you have referred to the Court as a Gilbert and Sullivan show, and accused the Court of not knowing how to rule on questions. For this contempt you are sentenced to [prison] for a period of not less than one year nor more than two years, to take effect upon the expiration of the first sentence I have imposed." (Tr. 3221).

THIRD CHARGE

All the subsequent charges occurred during the introduction of evidence for the defense and the closing procedures of the trial. The third charge stemmed from examination of an inmate, Harold DeMino. (Tr. 1537-1659). DeMino was the third witness called by the defense. (Tr. 1449-1537).

The Commonwealth had rested on the ninth day of the trial (Tr. 1379), and the incident involved in the third charge took place in the morning of the eleventh trial day.

Co-defendants Langnes had led off with his examination of the witness. (Tr. 1537-1593). Petitioner took up from there. Several times, the trial judge intervened without waiting for the prosecutor to object. (Tr. 1596-1599, 1602-1603, 1605, 1607, 1609). Petitioner asked the judge not to badger the witness. (Tr. 1609). The court responded: "You let me handle my share of it, and you handle yours. . . . Don't try to be judge at the same time. Just handle your case. I will be the judge." (Tr. 1609). Petitioner turned to the part of the incident in which he had been captured. (Tr. 1611). The court refused to permit petitioner to develop from the witness whether he had seen the petitioner resisting arrest or fighting with the arresting officers. (Tr. 1615-1617).

Next petitioner, trying to establish a defense of entrapment, took up with the witness conversations between prison officials and other inmates. Again the court intervened. (Tr. 1619). Petitioner protested to the court's taking examination of the witness out of his hands. (Tr. 1619). After further efforts to use the witness to show the alleged entrapment were blocked by successful prosecution objections, petitioner declared: "Now, I'm going to produce my defense in this case and not be railroaded into any life sentence by any dirty, tyrannical old dog like yourself." (Tr. 1627).

In the court's summary conviction of contempt, this incident is described as follows: "On November 23, 1966, you have accused the Court of railroading you into a life sentence, and by referring to the Court as a 'dirty, tyrannical old dog.'" A consecutive sentence of not less than one nor more than two years was imposed. (Tr. 3221-3222).

FOURTH CHARGE

The fourth charge of contempt against petitioner was based upon events during the next trial day, although a long Thanksgiving Day recess had intervened. The fourth defense witness, Alfred J. Nardi, Jr., was on the stand. Following cross examination (Tr. 1787-1791), petitioner undertook redirect examination of the witness. (Tr. 1791). The witness gave an answer which appeared to petitioner to be a mistake. (Tr. 1792). After another question was put and the witness had corrected himself, petitioner asked him whether he had understood the prior question. The court, again without objection by the district attorney, interrupted: "He answered your question. Let's go on." (Tr. 1792). Petitioner started to explain: "I am asking him now if he understands–" and the trial judge interrupted again: "He answered it. Now, let's go on." (Tr. 1793). In this context, petitioner stated: "I ask Your Honor to keep your mouth shut while I'm questioning my own witness. Will you do that for me?" The judge responded: "I wish you would do the same. Proceed with your questioning." (Tr. 1793).

In the summary contempt proceeding, the court described this incident thusly: "On November 28, 1966, you have directed the Court to 'keep its mouth shut' when it tried to quiet you down, and while you were questioning your own witness." (Tr. 3222). The usual sentence followed: confinement for a period of not less than one year nor more than two years to take effect upon the expiration of the sentence previously imposed. (Tr. 3222).

FIFTH CHARGE

The next charge concerned an exchange that took place at the outset of the thirteenth trial day. Petitioner protested that he was being confined during the trial under conditions that prevented him from preparing his defense. Among other things, he declared that he was being denied his legal papers and any facilities for writing. (Tr. 1834-1835). The

initial responses of the court were: "You made that statement yesterday" and "That is your statement and a collateral issue we are not going into. Proceed." (Tr. 1835, 1836). The discussion continued:

"THE COURT: We are not going into any collateral issues here. What may or may not be said by others has nothing to do with this. The question is whether or not a proper and fair trial is given to you in this court. You have a right to object to anything that you think is improper as to matters that occur in court. As to what happens after you leave the courtroom and then taken back to the prison is a matter that has to be taken up with the prison officials.

"MR. MAYBERRY: But when it interferes with my right to a fair trial–

"THE COURT: I don't see that it does.

"MR. MAYBERRY: I can't prepare my legal papers.

"MR. LIVINGSTON [Adviser for a co-defendant]: I have been asked by defendant Langnes to make a motion at this time in which the Court is being asked to direct the prison authorities to allow these defendants to at least have their legal documents wherever they are confined. I think they are entitled to that and ask the Court for it.

"MR. MAYBERRY: I have a Federal court order ordering the prison authorities not to take my legal papers away from me no matter where I am, and they are in direct violation with the Federal court order.

"THE COURT: I suggest you take it up with the Federal court.

"MR. MAYBERRY: You're a judge first. What are you working for? The prison authorities, you bum?

"MR. LIVINGSTON: I have a motion pending before Your Honor.

"THE COURT: I would suggest–

"MR. MAYBERRY: Go to hell. I don't give a good God damn what you suggest, you stumbling dog."

(Tr. 1837-1839). The trial judge denied Mr. Livingston's motion. (Tr. 1840). Thereupon, Codispoti and Langnes launched into a tirade against the judge. (Tr. 1841-1842). At the conclusion, petitioner added: "You started all this bullshit in the beginning." (Tr. 1842). The trial judge three times admonished petitioner to keep quiet. To the last, petitioner responded with a question: "Are you going to gag me?" (Tr. 1842).

The trial judge called for a recess, and immediately thereafter stated for the record that he had called the superintendent of the prison and instructed him to turn the defendants' legal papers over to them. (Tr. 1842-1843). This accomplished, the trial resumed.

When this incident is recorded in the summary contempt findings, it was stated as follows: "On November 29, 1966, you have accused the Court of being 'a bum,' and working for the prison authorities, of going to hell, of not giving a good G.D. on the Court's suggestions, referring to the Court as a 'stumbling dog,' and referring to the proceedings as B.S., and inviting the Court to gag you. For these contempts it is the sentence of this court that you be confined in [prison] for a period of not less than one year nor more than two years, to take effect upon the expiration of the sentence previously imposed." (Tr. 3222-3223).

SIXTH CHARGE

On December 1, 1966, the fifteenth day of the trial, co-defendant Langnes took the stand in his own behalf. (Tr. 2152). Up to that point, the defendants had been proceeding under an arrangement worked out with the court whereby each witness, as he was called, was examined *seriatim* by the three defendants on direct examination. (Tr. 1383-1390). This procedure had been suggested by the trial judge as his preference. (Tr. 1383). The same agreement apparently covered the testimony of the defendants themselves. (Tr. 1389-1390). Although that pattern had been followed for

five trial days, it was broken when Langnes took the stand. The court refused to allow petitioner to examine Langnes on direct examination after Langnes had finished testifying in his own behalf. (Tr. 2192-2193, 2200-2202). After a lunch recess, petitioner asked again for clarification on the order of presenting evidence. (Tr. 2218-2219). The court made no clarifying explanation, but ordered the trial to proceed. (Tr. 2219-2220). Petitioner asked once again for guidance and, receiving none, desisted. (Tr. 2221).

Meanwhile, Langnes had called the other co-defendant, Codispoti, to the stand. (Tr. 2209). When Langnes persisted in asking questions ruled out of order by the court, the judge directed Codispoti to step down. (Tr. 2264). Petitioner renewed his question concerning manner of proof in order to examine Codispoti. The court again refused to permit petitioner to examine. (Tr. 2264-2266).

After a brief witness, Langnes called petitioner to the stand. The court ordered that another inmate witness testify first. (Tr. 2275-2278). That witness, Kenneth Souders, was sworn. Langnes asked for a chance to speak to the witness before examining him on the ground that he wanted to go over the witness' testimony and refresh his recollection. (Tr. 2278). Petitioner joined the protest, and the judge declared: "This is not your witness, Mr. Mayberry. Keep quiet." (Tr. 2279). Petitioner rejoined that Souders was his witness also, and that the defense has the same right as the prosecution to speak to its witnesses prior to putting them on the stand. (Tr. 2279-2280). The court interrupted petitioner's argument:

> "THE COURT: Now, I have ruled, Mr. Mayberry.
>
> "MR. MAYBERRY: I don't care what you ruled. That is unimportant. The fact is–
>
> "THE COURT: You will remain quiet, sir, and finish the examination of this witness.
>
> "MR. MAYBERRY: No, I won't be quiet while you try to deny me the right to a fair trial. The only

way I will be quiet is if you have me gagged. Now, if you want to do that, that is up to you; but in the meantime I am going to say what I have to say. Now, we have the right to speak to our witnesses prior to putting them on the stand. That is an accepted fact of law. It is nothing new or unusual. Now, you are going to try to force us to have our witness testify to facts that he has only a hazy recollection of that happened back in 1965. Now, I believe we have the right to confer with our witness prior to putting him on the stand.

"THE COURT: Are you finished?

"MR. MAYBERRY: I am finished.

"THE COURT: Proceed with your examination." (Tr. 2280-2281).

Langnes started to examine Souders, but almost immediately stopped. (Tr. 2283). An extraordinarily heated exchange between the trial judge and both Langnes and Codispoti ensued. (Tr. 2283-2287). Petitioner asked for a severance "because of all this." (Tr. 2287). It was refused. Petitioner replied: "Now, what do you want me to do? Just force me to sit here and be continually being prejudiced by all this here furor and all that is going on?" (Tr. 2287-2288). The court answered: "You have had your share of it, sir." (Tr. 2288). The court then precluded Langnes from asking the witness any questions, and petitioner and Codispoti declined to examine. (Tr. 2288-2289).

This transaction is described in the summary contempt finding against petitioner as follows: "On December 1, 1966, you directed the Court to keep quiet, of not caring how the Court ruled, and of refusing to remain quiet, that the only way that you will be quiet is to be gagged. You addressed the Court in an insolent manner as follows: 'Now, what do you want me to do? Just force me to sit here to be continually being prejudiced by all this here furor and all that is going on?'" (Tr. 3223). The one to two year sentence, again consecutive, was imposed "for this contempt."

SEVENTH CHARGE

The seventh charge brackets two fairly widely separated events that took place on the sixteenth trial day. At the outset of that day, co-defendant Langnes rested. (Tr. 2299). Petitioner's defense ensued, and he called Langnes back to the stand. (Tr. 2301). A series of objections to the form of petitioner's questions was made. (Tr. 2305, 2306, 2307, 2308, 2312, 2313, 2314). Langnes testified that, prior to the prison breach incident, one of the guards had been extremely tense. The prosecutor objected. Before the court ruled, petitioner said: "No. Don't state a conclusion because Gilbert is going to object and Sullivan will sustain. Give me facts. What leads you to say that?" (Tr. 2314). The examination continued without comment from the court.

A substantial part of petitioner's examination was devoted to trying to prove entrapment. The court permitted introduction of testimony of conversations between prison officials and inmates concerning plans to entrap petitioner, but refused to admit testimony concerning the acts of the inmates in carrying out those plans, the motives of the officials for implicating petitioner, or the rewards given the inmates. (Tr. 2320-2339, 2344-2349, 2355-2373, 2383-2401). During this examination, there was running conflict between petitioner and the court on what could be introduced to prove entrapment. Finally, the court took over the inquiry. (Tr. 2402). Petitioner objected to the court's initiatives without avail. (Tr. 2402-2403). The court ordered Mayberry to be quiet and he responded: "My witness isn't being in an inquisition, you know. This isn't the Spanish Inquisition." (Tr. 2403). The court prohibited any further questions "along those lines." (Tr. 2404). Petitioner asked several other questions going to his theory of entrapment, which were ruled out of order. (Tr. 2404-2408). The court told petitioner to "ask proper questions" or "we are going to call it quits with this witness." (Tr. 2408-2409).

Petitioner replied that he was trying to ask proper questions and asked the court what he considered proper? The trial judge opened the following exchange (Tr. 2409-2410):

> "THE COURT: I am not here to educate you, Mr. Mayberry.
>
> "MR. MAYBERRY: No. I know you are not. But your're not here to railroad me into no life bit, either.
>
> * * *
>
> "THE COURT: Do you have any other questions to ask the witness?
>
> "MR. MAYBERRY: You need to have some kind of psychiatric treatment, I think. You're some kind of a nut. I know you're trying to do a good job for that Warden Maroney back there, but let's keep it looking decent anyway, you know. Don't make it so obvious, Your Honor.
>
> "THE COURT: Do you have any further questions to ask this witness?"

The summary contempt charge coupled together both exchanges into a single contempt. "On December 2, 1966, you referred to the Court as a 'Sullivan' and to the district attorney as a 'Gilbert.' You have accused the trial Court of conducting a 'Spanish Inquisition,' of railroading you, by the Court, to 'a life bit,' of being a nut, and 'in need of psychiatric treatment,' of 'doing a good job for Warden Maroney there,' and of stating, 'but let's keep it looking decent, anyway, you know. Don't make it so obvious, Your Honor.'" (Tr. 3223). For this contempt, the trial court imposed a sentence of one to two years. (Tr. 3224).

EIGHTH CHARGE

During the morning of the seventeenth day of trial, petitioner was examining co-defendant Codispoti. After a morning recess, co-defendant Langnes tried to stop the trial on the basis of recent inflammatory articles in the news-

papers. (The jury was not sequestered.) The court ordered him to be quiet. Langnes disobeyed and the court had him removed from the courtroom. (Tr. 2498-2499). A short while later, Langnes was escorted back into the courtroom, and he immediately began his protests about the newspapers. (Tr. 2503). The trial judge asked whether there was a gag in the court. (Tr. 2504). There was an off record discussion, and it does not appear what, if anything, was done to Langnes during that time. Thereupon petitioner moved for a severance. The motion was denied, the judge saying: "I have heard that before. It is denied again. Let's go on." Petitioner said: "This is the craziest trial I have ever seen." (Tr. 2504).

At the end of his examination of Codispoti, still on the seventeenth trial day, petitioner called as witnesses a series of persons whom the court had refused to subpoena. (Tr. 2582-2591). Petitioner tried to get the court to rule as to each witness. The court asserted that he had previously approved the list of witnesses that petitioner could call and they were the only witnesses petitioner would be permitted to call. (Tr. 2589). In the course of the colloquy, the court told petitioner that he was commiting a contempt of court by calling witnesses not on the list of those subpoenaed. (Tr. 2591). Petitioner later said: "Before I get to that [calling witnesses whom the court had indicated were available] I wish to have a ruling, and I don't care if it is contempt or whatever you want to call it, but I want a ruling for the record that I am being denied these witnesses that I asked for months before this trial ever began." (Tr. 2592).

The court's description of the eighth contempt is: "On December 5, 1966, you referred to the conduct of the trial 'as the craziest trial I have ever seen.' You have refused to abide by the rulings of the court in stating, 'I don't care if it is contempt or not, but I want a ruling that I am being denied the witnesses I asked for months before the trial began.' For this contempt of court you are sentenced to [pri-

son] for a period of not less than one year nor more than two years, to take effect upon the expiration of the sentence previously imposed." (Tr. 3224).[1]

NINTH CHARGE

On the eighteenth day of trial, petitioner was examining James F. Maroney. Shortly before the noon recess (Tr. 2695), the court and petitioner engaged in a colloquy concerning the further testimony of the witness and its relevance to petitioner's previous offer of proof. The court indicated his belief that petitioner had exhausted the matters that he intended to prove by this witness. (Tr. 2682-2683). Petitioner indicated a further line of inquiry, which the court said was not within the offer. (Tr. 2683). When petitioner disagreed, the court said: "I have ruled on that, Mr. Mayberry. Now proceed with your questioning, and don't argue." Petitioner responded: "You're arguing. I'm not arguing, not arguing with fools." (Tr. 2683).

In the summary contempt, the trial judge imposed a one to two year sentence, consecutive with previous sentences, for this brief verbal exchange which he restated: "On December 6, 1966, you have made reference to the Court as a 'fool.'" (Tr. 3225).

TENTH CHARGE

The last two contempt charges levelled by the trial court, unlike the preceding nine, did not relate to language that offended the court. The tenth charge is put this way: "On December 7, 1966, you have created a despicable scene in

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[1]The trial court also cited additional conduct of petitioner on December 5, which the court characterized as referring to the court in a scurrilous manner. (Tr. 2610-2611). However, the court did not include that in his description of the contempt and stated as to this behavior: "I am not making a separate sentence for that." (Tr. 3224-3225)

refusing to continue calling your witnesses and in creating such consternation and uproar as to cause a termination of the trial." (Tr. 3225).

The date referred to is the nineteenth day of the trial. The day began with the petitioner testifying in his own case. (Tr. 2793). At the conclusion of his testimony, he called Manuel Madronal to the stand. (Tr. 2868). This witness was still testifying when the court adjourned for dinner (Tr. 2948), and was still on the stand when court adjourned after an evening session at 9:45 p.m. (Tr. 3030).

Just before the dinner recess, when petitioner persisted in asking the witness about hatred between a guard and petitioner, the court ordered him to cease his examination. (Tr. 2940). Petitioner failed to comply with the court's ruling and he was quickly removed from the courtroom. (Tr. 2941). Petitioner was allowed to return after the dinner recess (Tr. 2948), but was promptly removed again when he tried to examine the witness. (Tr. 2950). After a 9:10 p.m. recess, petitioner was again present. (Tr. 3017). Still demanding the right to finish examination of the witness, petitioner was ejected for the third and last time that day. (Tr. 3021). All of the interruptions were brief. The trial did not terminate, even for that day, when petitioner was removed.

There is some possibility that the court did not intend to rest the tenth charge on the events of December 7. Petitioner was also ejected from the courtroom several times the next day, December 8. (Tr. 3041, 3046, 3062, 3070, 3077). No contempt charge was made in reference to this date. That day, the twentieth trial day, began with a series of defense motions based upon a letter concerning the trial the prosecutor had written to a local newspaper, which printed it. (Tr. 3033-3034). As a result of this and other defense protest, the court ruled that the petitioner would be allowed to present no further evidence. (Tr. 3041). His continuing vocal protests to the involuntary termination of his case led to the further expulsions. (Tr. 3045-3046,

3060-3062). Petitioner began his closing argument to the jury. (Tr. 3065-3066). The court permitted him only one hour to sum up. The last two expulsions were produced by his effort to finish his argument to the jury. (Tr. 3070, 3077). These incidents do not fit the court's tenth charge any better than those of December 7.

ELEVENTH CHARGE

The last contempt charge is related to the events of December 9, 1966, the twenty-first trial day. All summations had been finished the preceding day, and the court was prepared to charge the jury. (Tr. 3090). Petitioner announced that he would not remain silent and that he would object to having been forced to terminate his defense. (Tr. 3089-3090). Petitioner, though gagged, continued to speak. (Tr. 3092, 3093). The court thereupon had petitioner and Codispoti, who also insisted on speaking, removed to another room where a loudspeaker carried the jury charge to them. (Tr. 3094a-3094b).

These events are described in the summary contempt finding as follows: "On December 9, 1966, you have constantly, boisterously, and insolently interrupted the Court during its attempts to charge the jury, thereby creating an atmosphere of utter confusion and chaos. For this contempt of court it is the sentence of this court that you be confined in [prison] for a period of not less than one year nor more than two years, this sentence to take effect upon the expiration of the previous sentence imposed." (Tr. 3225-3226).

The trial court thus completed the series of eleven sentences which, in the aggregate, imposed upon petitioner a sentence of confinement of not less than eleven years nor more than twenty-two years for contempt of court. These sentences, as indicated above, were imposed on December 12, 1966. (Tr. 3216). Having pronounced what appears to be the longest prison sentence for contempt of court in the

annals of Anglo-American law, the court turned to the sentences for the charges of prison breach and holding hostage. Petitioner, at that point, tried to speak to the court "concerning the contempt proceedings." (Tr. 3226). The court, declining to entertain any statements, imposed sentences aggregating a minimum of twenty years and a maximum of forty years on the substantive crimes, and ordered petitioner removed from the courtroom. (Tr. 3226-3227).

On appeal of the criminal contempt conviction to the Supreme Court of Pennsylvania, that court affirmed. 434 Pa. 478, 255 A.2d 131 (1969). Justice Jones wrote an opinion in which one other justice joined. Justices Roberts, Cohen and Egan concurred in the result. Justice O'Brien dissented.

SUMMARY OF ARGUMENT

IA. Petitioner's conviction in a summary proceeding of serious charges of criminal contempt and his sentence of 11 to 22 years violate the Constitution's guarantees of due process of law. No hearing was held. The defendant was given no notice of the charges and no opportunity to present evidence or argument by way of defense or mitigation. Since *Bloom v. Illinois*, 391 U.S. 194 (1968), it is established that petitioner's conviction is for a crime in the ordinary sense. The denial of due process of law in such a proceeding cannot be justified by considerations of efficiency or the desirability of vindication of the authority of a court. "Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries." *Id.* at 208. More basic even than the right to a jury trial, upheld in *Bloom*, is the right to a trial at all.

This contention in no way detracts from the powers of trial courts to quell disturbances and insure that dignity, order and decorum are preserved. *Illinois v. Allen*, 397 U.S.

337 (1970), decided by this Court last Term, outlines the varied sanctions available to a trial judge to use mid-trial. Significantly not included is the power to convict and sentence the contemnor to a prison term, certainly not to inflict the punishments that apply to serious offenses.

B. Even if petitioner was not constitutionally entitled to a nonsummary trial on the issue of guilt, he was at least entitled to a hearing on the question of sentence. The trial court denied to petitioner even the ancient right of allocution, to speak in mitigation before the pronouncement of sentence. Petitioner had the right to try to reduce or blunt the fury that manifested itself in the court's excoriation of the contemnor and the unprecedented sentence. Through his own efforts or through counsel or by the testimony of witnesses, he should have been allowed to bring to the court's attention any mitigating or extenuating factors, including the nature of the defendants and the conditions and circumstances that provoked the conduct condemned by the court with such ferocity.

II. Petitioner was convicted of a serious criminal charge without the benefit of counsel and without having effectively waived counsel. Even in the most summary contempt prosecution, the charged contemnor has a constitutional right to counsel. That right was denied in this case. Nor can it be said that petitioner waived his right to counsel. The decision made to represent himself in the trial of the felony charges, during which the alleged contempts occurred, does not operate as a waiver of counsel in the separate and later prosecution for serious contempt charges.

III. In the circumstances of this case, petitioner was entitled to have his criminal contempt charges heard by a judge other than the judge who presided over the felony trial. The contempts charged included a continuing personal confrontation with the judge. There is substantial evidence that this confrontation affected the impartiality of the court. Not the least of these indications is the sentence imposed.

In any event, the potential for bias was clearly present. Where a judge has been subjected to personal criticisms and insults that strike at the most vulnerable and human qualities of a judge's temperament, he should be disqualified to preside in a contempt prosecution. *Offutt v. United States*, 348 U.S. 11 (1954); *In re Murchison*, 349 U.S. 133 (1955); *Bloom v. Illinois, supra* at 202. It is unsound to ask the trial judge in such cases to determine whether his reactions have reached the point where he can no longer act as an unbiased arbiter. Appellate courts should not be forced to try to feel the heat of a courtroom from a cold record. Most important of all, it is vital that the courts not only provide, but appear to provide justice.

IV. The Pennsylvania criminal contempt statute, as applied to petitioner, is unconstitutionally vague. The statute specifically restricts the powers of the courts to convict of contempts for courtroom misbehavior only if the result is the "obstructing of the administration of justice." Act of June 16, 1836, P.L. 784, § 23; Pa. Stat. Ann. tit. 17, § 2041 (1962). Application of this statute to permit summary punishment for insulting and disrespectful language that does not hinder or impede the progress of a trial does such violence to the language as to deprive it of the necessary quality of fair notice to persons governed thereby. *Lanzetta v. New Jersey*, 306 U.S. 451(1939).

V. The 11 to 22 year sentence imposed upon petitioner for contumacious courtroom behavior constitutes cruel and unusual punishment. It is a sentence unprecedented in Anglo-American history. In 1821, this Court stated that there are "known and acknowledged limits of fine and imprisonment" for criminal contempts. *Anderson v. Dunn*, 6 Wheat. 204, 228 (1821). In that same case, this Court affirmed the principle that the punishing power for contempts should be "the least power adequate to the end proposed." *Id.* at 231. In recent years, the severity of punishments for contempt violations has escalated. However, there is nothing comparable to the sentence in this case.

More than half of the States, unlike Pennsylvania, have placed legislative maxima on criminal contempt punishments; the longest of these is six months, and they range downward to three days and 30 hours in Texas and Kentucky respectively. A survey of the reported appellate decisions across the country for the past twenty years discloses only five cases in which the trial court had imposed a contempt sentence for in-court misbehavior in excess of six months; three of those were reversed by appellate courts. The 22 year sentence imposed upon petitioner is greater than the sentence that can be imposed in Pennsylvania for murder in the second degree. The sentence is so far out of line with legislative and judicial actions in comparable matters as to constitute cruel and unusual punishment. *Weems v. United States*, 217 U.S. 349 (1910); *Trop v. Dulles*, 356 U.S. 86 (1958).

ARGUMENT

I

IN A SERIOUS CRIMINAL CONTEMPT CASE, FOUNDED UPON ALLEGED MISBEHAVIOR IN THE PRESENCE OF THE COURT THEREBY OBSTRUCTING THE ADMINISTRATION OF JUSTICE, AND PROSECUTED AT THE CONCLUSION OF THE PROCEEDING IN WHICH THE CHARGED CONTEMPTS OCCURRED, THE DEFENDANT IS ENTITLED TO THE BASIC REQUISITES OF DUE PROCESS OF LAW: NOTICE OF THE CHARGES AND THE OPPORTUNITY TO BE HEARD IN DEFENSE OR MITIGATION.

A. Petitioner Was Entitled to a Nonsummary Court Trial.

Petitioner was summarily convicted of eleven charges of criminal contempt and sentenced to prison for a minimum of 11 years and a maximum of 22 years. There was no process beyond the trial court's pronouncement of guilt and sentence. Petitioner was never given notice of the charges against him. Petitioner was denied the right to file motions and pleadings to present claims and raise relevant issues, in-

cluding possible challenge for bias of the trial judge in the contempt prosecution. No evidence was adduced against him, and he was deprived of the rights to confront and cross-examine witnesses. He had no opportunity to call witnesses in his own behalf. The right of allocution, to speak in mitigation before sentence was pronounced, was abridged. In sum, petitioner was deprived of all the basic procedures embodied in the concept of Due Process of Law, as guaranteed by the Fourteenth Amendment to the Constitution. Such a conviction cannot be allowed to stand.

This case presents the newest chapter in the long struggle to resolve the tension between the Constitution and the law of criminal contempt. The Constitution, in the Bill of Rights, declares that no person shall be compelled to submit to autocratic and despotic power wielded by any government official, including members of the judiciary. The law of criminal contempt, on the other hand, has traditionally maintained that it is necessary for trial judges to have precisely such power. So long as the judges used that unbridled power with extreme restraint, particularly in the sanctions imposed upon contemnors, the clash with constitutional principle could be muted. Events of the past quarter of a century have seen the steady disappearance of the judicial restraint that had theretofore marked the exercise of the contempt power. Harsher and harsher sentences have been pronounced in various types of contempt prosecutions. At the same time, this Court has moved forthrightly to declare that the Constitution does govern criminal contempt law as applied by today's judges.

Two years ago this Court declared for the first time that criminal contempts are crimes. *Bloom v. Illinois*, 391 U.S. 194 (1968). Mr. Justice White, for a majority of seven Justices, wrote the opinion of the Court, which fundamentally altered the relationship between the Constitution and the law of criminal contempt:

> "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong

which is punishable by fine or imprisonment or both. In the words of Mr. Justice Holmes:

> 'These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech.' *Gompers v. United States*, 233 U.S. 604, 610 (1914).

Criminally contemptuous conduct may violate other provisions of the criminal law; but even when this is not the case convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same. Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical-protection of the institution of our government and enforcement of their mandates." *Id.* at 201.

More basic even than the right to a *jury* trial, upheld in *Bloom*, is the right to a trial at all. It is inherent in this Court's decision in *Bloom* that there is a constitutional right to a hearing of some kind in a trial to a court.[2] That hearing, at its absolute minimum, is defined by the bedrock concepts of Due Process of Law.

This Court's rationale in *Bloom* goes well beyond the particular right of the trial by jury. The Court explicitly rejected history and "immemorial usage" as a necessary or sufficient basis either to uphold the existing procedures or to jettison them. "We do not find the history of criminal contempt sufficiently simple or unambiguous to rest rejection of our prior decisions entirely on historical grounds.... In any event, the ultimate question is not whether the traditional doctrine is historically correct but whether the rule that criminal contempts are never entitled to a jury trial is a nec-

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[2]Petitioner was not entitled to a jury trial by virtue of this Court's decision in *DeStefano v. Woods*, 392 U.S. 631 (1968). It does not follow, of course, that petitioner was not entitled to a full trial to a judge sitting without a jury.

essary or an acceptable construction of the Constitution." 391 U.S. at 198-200 n. 2. The Court frontally entertained and upheld "challenges to a constitutional principle which is firmly entrenched and which has behind it weighty and ancient authority." *Id.* at 197-198.

The analysis recited the manifold apprehensions of potential abuse of the contempt power, as reflected in both legislative acts and judicial opinions. Mr. Justice White's opinion summed up the experience:

> "This course of events demonstrates the unwisdom of vesting the judiciary with completely untrammeled power to punish contempt, and makes clear the need for effective safeguards against that power's abuse. Prosecutions for contempt play a significant role in the proper functioning of our judicial system; but despite the important values which the contempt power protests, courts and legislatures have gradually eroded the power of judges to try contempts of their own authority. In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases. Our experience teaches that convictions for criminal contempt not infrequently resulting in extremely serious penalties, see *United States v. Barnett*, 376 U.S. 681, 751 (Goldberg, J., dissenting), are indistinguishable from those obtained under ordinary criminal laws." 391 U.S. at 207-208.

The decisions cited by Mr. Justice Goldberg are almost beyond comparison in harshness to the sentence imposed upon petitioner. The longest sentences mentioned were the three years of confinement imposed in *Green v. United States*, 356 U.S. 165 (1958), and in *Collins v. United States*, 269 F.2d 745 (9th Cir. 1959). The other punishments included by Mr. Justice Goldberg to show dramatic increase in severity were 18 months, 15 months, a year and one day, and one year. There is more than a difference in degree between these sentences and the confinement to a minimum of 11 years and a maximum of 22 years imposed upon peti-

tioner. It exceeds by more than seven times the harshest sentence referred to in a collection of harsh sentences.

This Court, in *Bloom*, considered and rejected the contention that considerations of efficiency or the desirability of vindicating the authority of the court justify summary trial of serious criminal contempt charges.

> "We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries." 391 U.S. at 208.

This Court specifically alluded to the question of contempts that might be committed in the actual presence of the court. The contempt charge in *Bloom* was not of that nature. The Court, believing that special mention of courtroom contempt procedure was warranted, declared its conviction that there is no need "to make exception . . . for disorders in the courtroom." 391 U.S. at 210.

The determination to require use of ordinary procedural protections, "those institutional procedures which have been worked out over the centuries," in serious criminal contempt prosecutions is wholly consistent with the trend of decisions by this Court in recent times. This was the eventual outcome of the uncertainty over the appropriate procedure to employ when a witness refuses without justification to testify before a grand jury. *Harris v. United States*, 359 U.S. 19 (1959).

This Court made it clear in 1963 that, where there is doubt as to a contemnor's criminal intent and where evi-

dence outside the record would bear on that issue, a summary conviction could not be permitted. *Panico v. United States*, 375 U.S. 29 (1963). In *Ungar v. Sarafite*, 376 U.S. 575 (1964), this Court upheld a 10-day prison sentence imposed by a State court on a witness found guilty of in-court contempt. The opinion of the Court specially noted that there was no procedural question presented by the manner of the defendant's contempt trial:

> "We do not and need not, however, deal with the circumstances in which a trial judge may or may not constitutionally resort to summary proceedings after trial. For in this instance, assuming a nonsummary hearing was required, the hearing afforded petitioner satisifed the requirements of due process." *Id.* at 589.

The opinion continues, in footnote, to outline briefly the due process requirements complied with in the State prosecution:

> "These requirements include the right to be adequately advised of the charges, a reasonable opportunity to meet the charges by way of defense or mitigation, representation by counsel, and an adequate opportunity to call witnesses." *Id.* at 589 n. 9.

The Court also discussed the due process requirements recently in *Holt v. Virginia*, 381 U.S. 131 (1965), which reversed a State summary conviction for contempt involving a contempt defendant and his attorney on the ground that the attack upon the judge was part of a legitimate defense motion to disqualify the judge in the contempt case. The opinion of the Court declares the necessary manner of trying contempt cases consistently with the Constitution:

> "And it is settled that due process and the Sixth Amendment guarantee a defendant charged with contempt such as this 'an opportunity to be heard in his defense—a right to his day in court—. . . and to be represented by counsel.' *In re Oliver*, 333 U.S. 257, 273. . . . The right to be heard must necessarily embody a right to file motions and pleadings essen-

> tial to present claims and raise relevant issues." *Id.* at 136.

The pattern of decisions of this Court makes it clear, almost beyond argument, that nonsummary procedures are constitutionally required in serious criminal contempt prosecutions. The line between "serious" and "petty" prosecutions was drawn at six months for purposes of the right to trial by jury. *Bloom v. Illinois, supra; Cheff v. Schnackenberg*, 384 U.S. 373 (1966). In so doing, this Court applied the analogous standard of the right to jury trial in ordinary criminal prosecutions. There is no analogy in ordinary criminal law that permits dispensing with rudimentary due process in any form of prosecution. There is a suggestion that the six month period might govern, however, in this Court's special discussion in *Bloom* of the problem of courtroom contempts committed in the presence of the trial judges. 391 U.S. at 210.[3] *Cf. Fisher v. Pace*, 336 U.S. 155 (1949). Even if the six month period were invoked to draw the outer limit of summary criminal contempt, petitioner's conviction is constitutionally infirm.

The contention made here relates to criminal contempt prosecutions tried, as was petitioner, at the conclusion of the proceeding in which the alleged contempts occurred. Nothing here detracts from the powers of trial courts to quell disturbances and to insure that dignity, order and decorum are preserved. In *Illinois v. Allen*, 397 U.S. 337 (1970), decided last Term, this Court addressed itself to the sanctions that are available to the courts in dealing with unruly defendants:

> "We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag

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[3]Six month sentences were upheld in *Sacher v. United States*, 343 U.S. 1 (1952); *Ex parte Terry*, 128 U.S. 289 (1888). These appear to be the largest sentences this Court has ever allowed to stand in prosecution for in-court contempts.

> him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly." *Id.* at 343-344.

The opinion makes clear that citation for contempt is not summary conviction; there would follow a subsequent trial of the contempt charges, at which the court might still face a still unruly defendant. *Id.* at 345. The third category, removal from the courtroom, could permit the trial to continue in the defendant's absence, as occurred in Allen's case. Or, as this Court noted, the trial judge could ". . . imprison an unruly defendant such as Allen for civil contempt and discontinue the trial until such time as the defendant promises to behave himself." *Id.* at 345. There are thus several remedies available to the judge faced with the defendant bent upon disrupting the trial.

Significantly, nothing in the opinion of the unanimous Court in *Allen* suggests the need or propriety for summary conviction of criminal contempts that might occur in the presence of the court. *Cf. Fisher v. Pace*, 336 U.S. 132 (1949).

It is submitted that petitioner's summary criminal contempt conviction, at the conclusion of the proceedings in which the alleged contempts occurred, on charges serious enough in the mind of the presiding judge to warrant sentences aggregating 11 to 22 years, violates the Due Process Clause of the Fourteenth Amendment.

B. Petitioner Was Entitled at Least to a Hearing on Sentence.

Even if this Court should not accept the contention that petitioner was entitled to a nonsummary trial on guilt, albeit without a jury, petitioner was at least entitled to a hearing on the question of sentence. The ancient right of allocution, to speak in mitigation before the pronouncement of sentence, is a fundamental right. The trial judge here

chose to impose upon petitioner a wholly unprecedented sentence of incomparable harshness. He did so by employing on each of 11 counts a sentence that ranks with the longest ever pronounced for in-court contempts. Thereupon, with unmatched stringency, the trial court directed that the 11 severe sentences be served consecutively. In a few minutes, the trial court sentenced petitioner to a total of 62 years in prison, of which 22 were for the criminal contempt convictions. In such a case, it needs no extended argument to show that there ought to have been a hearing on the question of sentence before punishment was fixed.

The enormity of the sentence speaks with clarity to the feeling of righteous anger that moved the court. His words underscore the pent up fury that was unleashed. At the outset of his jury charge, he advised the jury that they "have had the experience of witnessing a trial so utterly horrendous and disgusting in nature that certainly has never been equalled in the annals of this Commonwealth of Pennsylvania, and probably not even in the annals of any state in the union." (Tr. 3095). The excoriation of petitioner and his co-defendants continued the following Monday when they appeared for sentencing on the felony charges. Before sentencing, the trial court denounced them collectively:

> ". . . during the trial on charges of holding hostages and for prison breach you have conducted yourselves with such utter contempt of court and such outrageous defiance of and scorn for judicial proceedings that seems unequalled in judicial history. You have deliberately heaped ridicule upon orderly proceedings, and have by your words and actions knowingly intended to impair, taint, and undermine the respect and confidence of the public in our Criminal Courts.
>
> "You have by your contumacious conduct attempted to create a circus atmosphere and a sham of this trial. Your actions have created an atmosphere highly detrimental to the proper administration of justice.

"You have abused and ridiculed the trial proceedings, defied Court orders, addressed vulgar, scurrilous, and insulting language to the Court, and have wilfully baited the Court in your efforts to obtain a mistrial.

"Your actions have brought consternation to the adherence of justice under law and have brought joy and delight in the hearts of abettors bent on destruction of our very system of social order and administration.

"You have given false hope or aspiration to others to attempt to repeat your disgusting tactics. You have attempted to undermine the very structure of that institution in which you sought the protection of your rights as defendants, and have mistakenly construed the patience of the Court for license to heap your detestable abuse upon it.

"You have accused this Court of criminal conspiracy with prison officials to obstruct justice and of entering into a conspiracy with the news media to leak out unwarranted and improper information to poison the minds and inflame the jury. You have made unmitigated attacks on the trial Judge, threatening his life, and referring to him as a dirty S.O.B., a bum, a tyrant, an idiot, a creep, a punk, a fool, a dirty stumbling old dog, a nut, a Caesar, of being crazy, of conducting a Gilbert and Sullivan comic opera, and of infiltrating the courts with communist tactics.

"The Court has endured this day by day outrageous conduct and waited for the disposition of open rebellion and contempt only because of its concern for a fair and impartial trial, and of the impact the spot punishment might have on the jury.

"I want you and all others inclined towards such contumacy to know that the Court is charged with the duty of being the primary protector of its judicial dignity and conscience, and of its public standing as a judicial forum.

> "The time is ripe to protect the interest of the general public in the administration of justice, and to punish for direct contempt I shall impose punishment only for the more glaring acts of contempt.
>
> "Richard Mayberry, stand." (Tr. 3219-3221).

Quite possibly, nothing could have been offered by petitioner or by counsel that would have reduced or moderated the force that these words indicate. Nevertheless, we contend that petitioner had the right to try, through his own efforts or through the pleading of counsel or by witnesses, to show the sentencing court that the conduct did not justify such extremes of condemnation and punishment. The trial court took no cognizance of any mitigating or extenuating factors, including the nature of the defendants and the conditions and circumstances that provoked the conduct the court condemned with such ferocity.

This Court has held that due process safeguards, including the right to counsel, apply to a variety of sentencing proceedings. *E.g., Specht v. Patterson*, 386 U.S. 608 (1967); *Mempa v. Rhay*, 389 U.S. 128 (1967); *Chewning v. Cunningham*, 368 U.S. 443 (1962); *Reynolds v. Cochran*, 365 U.S. 525 (1961); *Moore v. Michigan*, 355 U.S. 155 (1957); *Chandler v. Fretag*, 348 U.S. 3 (1954); *Williams v. New York*, 337 U.S. 241 (1949) (dictum); *Townsend v. Burke*, 334 U.S. 736 (1948). The variations in factual circumstances, even in direct contempts, require that contemnors be afforded the opportunity to offer evidence or argument going to the degree of criminal intent and mitigation of penalty. See, *e.g., Panico v. United States*, 375 U.S. 29 (1963); *Hoffman v. United States*, 341 U.S. 479 (1951); *In re Oliver*, 333 U.S. 257 (1948); *Rollerson v. United States*, 343 F.2d 269 (D.C. Cir. 1964); *Widger v. United States*, 244 F.2d 103 (5th Cir. 1957); *Offutt v. United States*, 232 F.2d 69 (D.C. Cir.), cert. denied, 351 U.S. 988 (1956).

Judge Henry Friendly holds the opportunity of a contemnor to speak in mitigation of punishment as so fundamental that he would reverse a summary contempt conviction on

that ground, even though the matter had not been presented as a ground for appeal. He declared: ". . . I would reverse the conviction because of the judge's failure, of his own motion, to accord Mirra any opportunity to speak in explanation or extenuation, either in person or by counsel. In my view this was so fundamental a requirement that it is immaterial either that Mirra's counsel did not affirmatively seek such an opportunity or that the point was not urged before us." *United States v. Galante*, 298 F.2d 72, 76 (2d Cir. 1962) (concurring and dissenting opinion). Judge Friendly distinguished *Sacher v. United States*, 343 U.S. 1 (1952), on the ground that the presiding judge there had, of his own motion, permitted each defendant to address the court immediately after he had read the certificates and orders and "surely would have altered these if defendants' statements had proved persuasive." *Id.* at 79.

Even if it is permissible under the Constitution to deny petitioner any form of hearing on the merits of the contempt charges, it is submitted that there is a constitutional right, violated in this case, to a hearing on the sentence to be imposed.

II

PROSECUTION OF A SERIOUS CHARGE OF CRIMINAL CONTEMPT AGAINST AN UNREPRESENTED INDIGENT DEFENDANT, WHO HAD NOT WAIVED COUNSEL, VIOLATES THE RIGHT TO COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS.

The prosecution of petitioner for criminal contempt, leading to his sentence to prison for 11 to 22 years, was a separate legal proceeding from the prosecution for prison breach and holding hostage in which the alleged contempts occurred. During the trial for the ordinary criminal charges, petitioner exercised his constitutional prerogative to serve as his own counsel. (Tr. 26-30, 205). During the prosecution for criminal contempt, petitioner was unrepresented by

counsel and never effectively waived his right to be represented by an attorney.

Unquestionably, the constitutional right to counsel provided by the Sixth and Fourteenth Amendments to the Constitution applies to criminal contempt prosecutions. This Court has so indicated on numerous occasions. *E.g.*, *In re Oliver*, 333 U.S. 257, 273 (1948); *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964); *Holt v. Virginia*, 381 U.S. 131, 136 (1965); *Bloom v. Illinois*, 391 U.S. 194, 205 (1968). The Court of Appeals for the Fifth Circuit has held that, even in cases of summary contempt, the accused must be afforded the opportunity to consult with counsel, and failure to provide this opportunity constitutes a denial of due process. *Johnson v. United States*, 344 F.2d 401 (5th Cir. 1965). A district court recently concluded that the right to counsel in summary contempt cases applies only to the serious contempts punishable by more than six months. *Nelson v. Holzman*, 300 F. Supp. 201, 203 (D. Ore. 1969). See also *United States* ex rel. *Robson v. Malone*, 412 F.2d 848, 850 (7th Cir. 1969); *Appeal of S.E.C.*, 226 F.2d 501, 520 (6th Cir. 1955); and see *In re Williams*, 152 S.E.2d 317 (N.C. Sup. Ct. 1967); *Cardona v. Perez*, 280 N.Y.S.2d 913 (App. Div., 1st Dep't 1967); *Spencer v. Dixon*, 248 La. 604, 181 So. 2d 41 (1965).

Petitioner's waiver of counsel in the prison breach-holding hostage trial did not operate as a continuing waiver of his constitutional right to counsel in the subsequent criminal contempt proceeding. Compare *Chandler v. Fretag*, 348 U.S. 3 (1954). In *Chandler*, this Court held that a waiver of counsel in an ordinary prosecution did not extend to trial of an habitual offender charge, even though they may be conducted in a single proceeding. The criminal contempt prosecution is more clearly independent of the felony charge than an habitual offender prosecution. No waiver of counsel in the contempt case can be inferred from the previous waiver in the felony trial, which occurred, of course, before any possibility of the contempt prosecutions even arose.

It follows, therefore, that petitioner's conviction and sentence for criminal contempt are invlaid because obtained in violation of the defendant's constitutional right to counsel.

III

IN THE CIRCUMSTANCES OF THIS CASE PETITIONER WAS ENTITLED TO HAVE HIS CRIMINAL CONTEMPT CHARGES HEARD BY A JUDGE OTHER THAN THE JUDGE WHO PRESIDED OVER THE TRIAL OUT OF WHICH THOSE CHARGES AROSE.

The potential for bias created where contempt charges arise out of a continuing personal confrontation between the trial judge and a defendant is obvious. A judge who feels himself subject to personal attack by a litigant before him cannot, consistent with due process, preside over a subsequent criminal contempt prosecution, at least where there is no necessity for immediate adjudication. No such justifying necessity was present in this case inasmuch as the trial court in fact took no action to cite, convict or sentence petitioner for contempt until the verdict had been returned and the trial concluded. At this point, the court's action could not be justified as a necessary means of keeping order and enabling the trial to proceed.

The disqualification of a trial judge who has been subjected to personal criticism, where there is no necessity for instant action, is supported by a series of decisions in this Court. The rule's origin lies in the statement in *Cooke v. United States*, 267 U.S. 517, 539 (1925), that:

> "Where the contempt charged has in it the element of personal criticism or attack upon the judge . . . [then another judge should be called upon to adjudicate the contempt] where conditions do not make it impracticable, or where the delay may not injure public or private right."

Sacher v. United States, 343 U.S. 1 (1952), upheld a trial judge's delayed adjudication of in-court contempt, but on grounds distinguishable from this case. The opinion of the Court is addressed mainly to the propriety of summary conviction of contemnors. Upholding the power of a trial judge to use the contempt power in the course of the trial, the Court concluded that the trial judge should be permitted to do, at the end of the trial, what he could have done mid-trial. Since all but one of the defendants in *Sacher* were counsel for defendants, the Court noted the persuasive reasons to defer mid-trial sanctions against lawyers which might redound to the prejudice of their clients.

The decision of this Court last Term in *Illinois v. Allen*, 397 U.S. 337 (1970), rejects the premise of *Sacher* concerning the extent of the *criminal* contempt power that a trial court can exercise summarily mid-trial. This Court specifically did not include punishment for criminal contempt as one of the sanctions available to the trial judge to impose without a hearing. Indeed, the Court's opinion makes clear that such punishment, if warranted, will follow a trial of the contempt charges. The syllogism of *Sacher* has thus been broken at its major premise.

Even before the decision in *Allen*, the viability of *Sacher* has been in doubt, as a result of decisions by this Court. Thus, *Offutt v. United States*, 348 U.S. 11 (1954), reversed a conviction in which the trial judge had summarily found defense counsel in contempt at the close of trial. This Court held that, where the alleged contempt involved a clash between the trial court and the contemnors, it should have been heard by another judge. While the opinion specifically refused to "retrace the ground so recently covered in the *Sacher* case" (*id.* at 13), and relied upon the judge's apparent personal embroilment with the contemnors, it has been interpreted as indicative of a shift of position by the Court. See, *e.g.*, Anno., 99 L. Ed. 19 (1955); Anno., 3 L. Ed. 2d 1855 (1959); Note, *Procedures for Trying Contempts in the Federal Courts*, 73 Harv. L. Rev. 353, 362-363 (1959).

In *In re Murchison*, 349 U.S. 133 (1955), this Court made it clear that actual involvement by the judge need not be demonstrated to require his disqualification. The fact that he had played a role creating the potential for bias was enough. A judge who had acted as a one-man grand jury could not subsequently judge contempt charges arising out of the grand jury proceeding because the judge's role as the grand jury created a potential for bias inconsistent with the constitutional requirement of an impartial tribunal.

The standard for disqualification was restated in *Ungar v. Sarafite*, 376 U.S. 575 (1964). The distinction was noted between "disobedience to court orders and criticisms of its rulings during the course of the trial" and "criticisms of judicial conduct which are so personal and so probably productive of bias that the judge must disqualify himself to avoid being the judge in his own case." *Id.* at 584. This Court determined that the contempts in *Ungar* did not involve "an insulting attack upon the integrity of the judge carrying such potential for bias as to require disqualification." *Ibid.*

Nine of the eleven contempt charges levelled agianst petitioner by the trial court involved epithets directed to the judge personally, or were taken by the judge as personal aspersions. Words like "dirty sonofabitch," "dirty tyrannical old dog," "stumbling dog," and "fool" were directed at the judge. His conduct of the trial was variously characterized: analogies were made to Gilbert and Sullivan, and to the Spanish Inquisition, and the proceeding was described as "the craziest trial I have ever seen." The judge was told to "Go to hell" and "Keep your mouth shut." Accusations that the trial court was participating in a conspiracy to railroad the defendants and to force the defendants to be prejudiced were made. As this Court noted, such conduct "often strikes at the most vulnerable and human qualities of the judge's temperament." *Bloom v. Illinois*, 391 U.S. 194, 202 (1968).

The trial court's reactions to these events are plainly disclosed. Most significant, surely, is the unprecedented

severity of the sentences he imposed, aggregating 11 to 22 years. His language excoriating the defendants collectively is dramatic evidence of the extent to which he felt personally wounded by the verbal assaults. See pp. 32-34 *supra*.

Even if there were no such surface evidence of the court's personal reactions, the potential for such reactions is too strong to permit the same judge who was the target for the epithets to sit in judgment of the alleged contemnor. It is unsound to ask such a trial judge to determine whether he has reached the point that he can no longer act as an unbiased arbiter. F. R. Crim. P. 42(b) does not permit a federal court to be forced into such an awkward calculation; it has been said that the rule was "prompted by the common experience that uncommonly prejudiced individuals almost invariably consider themselves impartial. . . ." Anno., 3 A.L.R. Fed. 420, 422 (1970).

Further, a rule that does not turn on the probability of prejudice places appellate courts in the extremely uncongenial position of attempting to determine from a cold transcript the degree of heat that was reflected in the trial court's actions.

Perhaps most important, to avoid the suspicion that might be cast upon the integrity of the judicial system in such cases, it is vital that the courts not only provide, but appear to provide justice.

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. . . . But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States*, 348 U.S. 11, 14." *In re Murchison*, 349 U.S. 133, 136 (1955).

The nature of the contempts charged in this case, and the absence of any overriding necessity, lead to the conclusion that the trial court committed constitutional error in not disqualifying himself from presiding in the contempt proceeding.

IV

THE PENNSYLVANIA CRIMINAL CONTEMPT STATUTE, AS APPLIED TO PETITIONER, IS UNCONSTITUTIONALLY VAGUE.

Petitioner was convicted under a Pennsylvania statute which provides:

> "The power of the several courts of this commonwealth to issue attachments and to inflict summary punishments for contempt of court shall be restricted to the following cases, to wit:
>
> "I. To the official misconduct of the officers of such courts respectively.
>
> "II. To disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.
>
> "III. To the misbehaviour of any person in the presence of the court, thereby obstructing the administration of justice." Act of June 16, 1836, P.L. 784, § 23, Pa. Stat. Ann. tit. 17, § 2041 (1962).

The specific provision under which petitioner was convicted is III, misbehavior in the presence of the court thereby obstructing the administration of justice.

Application of this statute to petitioner's conduct, at least with respect to the first nine charges, does such violence to the language of the act as to render it unconstitutionally vague. The statute, as written, does not proscribe all misbehavior in the presence of the court. It makes criminal, as a contempt, only such misbehavior that thereby obstructs the administration of justice. Misbehavior that does not

produce the result of obstructing the administration of justice is outside the clearly stated ambit of the wrongful conduct.

Webster's Third New International Dictionary of the English Language defines "obstruct" to mean:

> "1: to block up: stop up or close up: place an obstacle in or fill with obstacles or impediments to passing . . . 2: to be or come in the way of: hinder from passing action or operation . . . 3: to cut off from sight: shut out."

"Obstructing" is not a concept that would be difficult for an ordinary person to understand. It does not appear to be ambiguous. In connection with legal proceedings, men of common intelligence would expect that "obstructing the administration of justice" would mean hindering or impeding or blocking the conduct of a trial.

On the other hand, it would be a shock to the average person to learn that "obstructing" can be equated with showing disrespect to a court, or using language that some would say is merely insolent or insulting to a court's dignity. To force such concepts into the meaning of "obstructing" is to rob the word of intelligibility and to render it, as part of a penal statute, unconstitutionally vague.

Due process requires that citizens be given reasonable warning of the conduct which a legislature acts to define as criminal. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). While the paradigm of a vague statute is one in which terms used are patently indefinite, considerations of fair notice become even stronger when statutory words of reasonable certainty are stretched and distorted beyond ordinary recognition.

The argument advanced here is not that the Commonwealth of Pennsylvania would violate the Constitution if it

were to define contempt in a way to include disrespectful and insolent conduct that does not obstruct the course of judicial proceedings. Some State legislatures have indeed declared that misbehavior of this form is criminal contempt. See, for example, the Virginia statute quoted in *Holt v. Virginia*, 381 U.S. 131, 135 n. 1 (1965), where contempt includes, in addition to misbehavior in the presence of the court or so near thereto as to obstruct or interrupt the administration of justice, the following:

> "(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding."[4] Va. Code Ann. § 18.1-292 (1960).

The New York statute, which underlay the prosecution upheld in *Ungar v. Sarafite*, 376 U.S. 575 (1964), defines criminal contempt as:

> "1. Disorderly, contenptuous, or *insolent behavior*, committed during [the court's] sitting, in its immediate view and presence, and *directly tending* to interrupt its proceedings, *or to impair the respect due to its authority*. . . ." *Id.* at 580; N.Y. Judiciary Law, § 750A (1965) (Emphasis added).

Sixteen States have similar provisions, based on this statute.[5]

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[4]This Court passed without decision a contention in *Holt* that the summary convictions were invalid because the alleged misconduct "did not disturb the court's business or threaten the demoralization of its authority." 381 U.S. at 135 n. 2

[5]Twelve States define contemptuous conduct in substantially the same language as the quoted NewYork provision:

Alaska: Alaska Stat. Sec. 09.50.010 (1962)
Arizona: Ariz. Rev. Stat. Ann. § 13-341 (1956)
Arkansas: Ark. Stat. Ann. 34-901 (1962)
California: West's Ann. Cal Penal Code § 166 (1970)
Iowa: Iowa Code § 665.2 (950)
Michigan: Mich. Stat. Ann. 27A.1701 (1962)

The Pennsylvania statute on its face is plainly not of this breadth. Nor have prior interpretations of the act since 1836 given it a settled meaning beyond that signified by its language. It appears that this case is the first case in which the Supreme Court of Pennsylvania has upheld a contempt conviction for conduct not obstructive of the administration of justice. *Cf. In re McDonald*, 110 Pa. Super. 352, 168 Atl. 521 (1933). It would be manifestly improper to permit such an interpretation, whatever its effect for future cases, to be given retroactive application. See Freund, *The Supreme Court and Civil Liberties*, 4 Vand. L. Rev. 533, 540-541 (1951).

The first nine charges of contempt against petitioner involve verbal epithets and allegations of misconduct by the trial court. None of these had any discernible effect upon the continuation in course of the trial. The specific conduct which the trial court cited as petitioner's contempts cannot be fairly described as "obstructing the administration of justice." The cited incidents were brief, some literally momentary in duration. At least the first count occurred outside the presence of the jury. The trial did not stop or even slow down as a result of the verbal sallies that the trial court characterized as "vulgar, scurrilous, and insulting language." (Tr. 3219).

Missouri: Mo. Ann. Stat. §476.110 (1952)
North Carolina: N.C. Gen. Stat. § 5-1 (1969)
North Dakota: N.D. Cent. Code § 27-10-01 (1960)
Oregon: Ore. Rev. Stat. § 33.010 (1969)
Washington: Wash. Rev. Code § 7.20.010 (1961)
Wisconsin: Wis. Stat. Ann. § 256.03 (1957)

Four States follow the basic New York definition, but delete the part that would allow a court to punish conduct which tends to "impair the respect due to its authority."

Idaho: Idaho Code § 7-601 (1948)
Minnesota: Minn. Stat. Ann. § 588.01 (1947)
Montana: Mont. Rev. Codes Ann. § 93-9801 (1964)
Utah: Utah Code Ann. § 78-32-1 (1953)

Again, it should be noted that the argument here is not that there was no other conduct which the trial court might have cited as tending more closely to fit the statutory definition of "obstructing the administration of justice." The trial court selected eleven specific charges. In his role as prosecutor and grand jury for the contempt prosecution, he made the choice of the charges to be brought. Even assuming *arguendo* that other conduct might have been charged, the record is closed and the conviction must stand or fall on the charges that were in fact brought. *Stirone v. United States*, 361 U.S. 212 (1960).

The extension of the statute by the State Supreme Court in this case is violative of the Constitution. Petitioner's convictions of at least nine of the eleven counts should be reversed on this ground.

V

THE 11 TO 22 YEAR SENTENCE IMPOSED UPON PETITIONER FOR CONTUMACIOUS MISBEHAVIOR IN COURT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION.

At the conclusion of a twenty-one day trial of three defendants on serious felony charges, a Pennsylvania trial court imposed upon petitioner, a *pro se* defendant in that trial, a sentence for contempt of court that is without precedent in Anglo-American history.

The court imposed eleven separate sentences of not less than one nor more than two years for courtroom incidents that had occurred on eleven days of the trial. As will be seen, each of those sentences is extraordinarily harsh. But the sentencing court did not make the eleven sentences concurrent. Each was made consecutive to previous sentences. The aggregate, a sentence of 11 to 22 years for courtroom misbehavior, is so wildly out of proportion with any reason-

able standards for fixing contempt sentences as to constitute cruel and unusual punishment.

The Pennsylvania contempt of court statute, which is 135 years old, contains no legislatively established maximum sentence for in-court contempts. Act of June 16, 1836, P.L. 784, § 23; Pa. Stat. Ann. tit. 17, § 2041 (1962). The Pensylvania statute is very similar to the federal statute, on which it evidently was patterned. 18 U.S.C. § 401. Where such statutes exist, sentencing courts and appellate courts have a responsibility far greater than that which exists under ordinary criminal laws. Since the range of permissible sentences is not prescribed, each sentence is subject to examination without the benefit of the normal presumption that attaches to a sentencing judge's discretion when exercised within statutory limits. Examination of the sentence imposed in this case shows a trial court decision that so far departs from reasonable and customary bounds as to violate the Eighth Amendment's ban of cruel and unusual punishment.

The absence of a statutory maximum sentence for in-court contempts in Pennsylvania does not mean that there are not relevant standards by which to gauge the extraordinary harshness of the sentence in this case. Many other State legislatures have adopted statutes that do contain maximum prison terms for such contempts, and their pattern is informative. Likewise, the history of judicial actions in dealing with in-court contempts, as reflected in reported decisions, shows a range of penalties that reflects the shared understanding of the trial and appellate judges as to proper sanctions for courtroom misbehavior.

There are analogous contempt statutes which cast light on the parameters that should be employed for in-court contempts. Finally, one can begin with the 11 to 22 year sentence imposed in this case and refer to the types of crimes that would or would not carry such a penalty in Pennsylvania.

By all of these benchmarks, it will be seen that the sentence in this case is so extreme as to be cruel and unusual punishment, calling for rejection under the Constitution.

The special urgency for judicial review of contempt sentences, where the legislature has not seen fit to impose limitations on the sentencing power, has been repeatedly noted by this Court. *E.g., Green v. United States*, 356 U.S. 165, 188 (1958); *Yates v. United States*, 355 U.S. 66 (1957); *Nilva v. United States*, 352 U.S. 385 (1957). A principle that has guided restraints on the punishing power for contempts was stated in *Anderson v. Dunn*, 6 Wheat. 204, 231 (1821), as "the least possible power adequate to the end proposed." This Court has reaffirmed that principle on many occasions. See *In re Michael*, 326 U.S. 224, 227 (1945); *In re Oliver*, 333 U.S. 257, 274 (1948). And see *United States* ex rel. *Robson v. Malone*, 412 F.2d 848 (7th Cir. 1969); *United States v. Conole*, 365 F.2d 306 (3d Cir. 1966), cert. denied, 385 U.S. 1025 (1967).

The sentence imposed upon petitioner by the Pennsylvania trial judge exceeds by a gross amount the statutory limitations of every State that has prescribed a maximum term for in-court contempts. A Table is appended to this brief summarizing those statutes. Pp. 53-54 *infra*. The highest maximum for such contempt, found in seven States (Alaska, Arizona, Connecticut, Iowa, Minnesota, Oregon and Washington) is six months. Many States provide considerably lower maximum prison terms. There is a 30 hour ceiling in Kentucky. Texas sets the maximum at three days. Five day limits are found in Alabama (Circuit Courts), Idaho and Montana. Five States (Arkansas, Ohio, Tennessee, Virginia, West Virginia) permit imprisonment, at least in summary convictions, up to only ten days. The Nevada maximum is set at 25 days. Five States (Mississippi, New York, North Carolina, North Dakota and Utah) fix the upper limit of confinement at 30 days. These statutes show the pattern of legislative judgments concerning the severity of prison sentences that should be open to sentencing

judges.[6] All fix terms that are a small fraction of the sentence in this case.

This summary of current statutes is in keeping with the findings of studies made of the statutes in force at or near the time of the adoption of the Constitution and the Bill of Rights. See *United States v. Barnett*, 376 U.S. 681 (1964) (Appendix to Opinion of the Court, 701-724; dissenting opinion of Mr. Justice Goldberg, 728, 741-749).

Although the Pennsylvania statutes do not fix any outer limits upon the punishments for in-court contempts, the legislature has set narrow restrictions on other kinds of contempt. For official misconduct of the officers of the courts, there can be no imprisonment. The only authorized penalty or for disobedience of the lawful process of the court, is a fine. Act of June 16, 1836, P.L. 784, § 24; Pa. Stat. Ann. tit. 17, § 2042 (1962). For indirect criminal contempts for violating a restraining order or injunction, the maximum punishment authorized is a fine of $100 or imprisonment not exceeding fifteen days, or both. Act of June 23, 1931, P.L. 925, §§ 1, 2; Pa. Stat. Ann. tit. 17, §§ 2047, 2048 (1962).

A review of the actual sentences imposed by trial judges for courtroom misbehavior, whether or not a statutory maximum exists, shows that the range of prison sentences is extremely low. A study was made of the reported decisions of appellate courts during the last twenty years. It was expected that these decisions would show the more severe sentences, since the impetus to appeal is less when a brief period of imprisonment is imposed and, in any event, such appeals would likely become moot. See, *e.g.*, *United States v. Galante*, 298 F.2d 72 (2d Cir. 1962). The results of this survey are attached in Table B, pp. 54-60 *infra*.

Nearly one hundred reported decisions that involved courtroom misbehavior were found. Some arose in civil

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[6]The Study Draft of a New Federal Criminal Code, issued by the National Commission on Reform of Federal Criminal Laws, (1970), proposes to limit the sentencing power of federal judges for courtroom contempts to either five days or thirty days. § 1341.

cases; most began during criminal proceedings. A majority involve sanctions imposed upon defense counsel. The cases listed in the Table involve the general kinds of misbehavior charged against petitioner. Cases arising from refusals to answer questions or from charges of false testimony were omitted. A few instances of disrespectful statements incorporated into writings delivered to courts were included.

The survey tends to support the statement by this Court in *Anderson v. Dunn*, 6 Wheat. 204, 228 (1821), that there are "known and acknowledged limits of fine and imprisonment" for criminal contempts. There is, however, further evidence confirming the observations of this Court that the penalties imposed in a few cases have increased appreciably in recent years. See *United States v. Barnett*, 376 U.S. 681, 694-695 (1964); *Bloom v. Illinois*, 391 U.S. 194, 207 (1968).

Within the twenty year period surveyed, only five cases were discovered in which the trial court imposed a criminal contempt sentence for in-court misbehavior in excess of six months. One of these, arising in the Illinois state courts, was considered by this Court in a federal habeas corpus proceeding. *DeStefano v. Woods*, 392 U.S. 631 (1968), affirming 382 F.2d 557 (7th Cir. 1967). *DeStefano* involved three sentences of one year, to be served concurrently, for "flagrant misconduct, disrespect and open defiance of the court's authority, continued in the face of repeated warnings and findings of contempt during the trial." 382 F.2d at 558. This Court considered only the question of DeStefano's claim of denial of trial by jury in allowing the one year sentence to stand.

Only one other of the five cases involving prison terms over six months came before this Court, and that one was reversed and remanded. *Panico v. United States*, 375 U.S. 29 (1963), reversing 308 F.2d 125 (2d Cir. 1962). A federal district court had summarily convicted and sentenced Panico to prison for 15 months imprisonment for wilful and deliberate acts, calculated to impede, obstruct, delay and abort a twelve week trial, including an incident where the defend-

ant jumped into the jury box. This Court vacated and remanded for a hearing under F. R. Crim. P. 42(b).

There were two other federal cases in this group of five; neither came before this Court. In both, the trial judges had imposed one year prison terms; in both the Courts of Appeals reversed. *Mirra v. United States*, 402 F.2d 888 (2d Cir. 1968); *Rollerson v. United States*, 343 F.2d 269 (D.C. Cir. 1964). The Court of Appeals for the Second Circuit reduced Mirra's sentence to six months, in light of *Cheff v. Schnackenberg*, 384 U.S. 373 (1966), since he had not been accorded a jury trial. Rollerson's conviction was reversed by the Court of Appeals for the District of Columbia Circuit and remanded for a hearing, like this Court's decision in *Panico*. After the hearing on remand, Rollerson was sentenced to a term of 90 days. See *Rollerson v. United States*, 405 F.2d 1078, 1080 (D.C. Cir. 1968).

The fifth and last case comes from Pennsylvania and involves the man who is petitioner in this case. *Commonwealth v. Mayberry*, 435 Pa. 290, 255 A.2d 548 (1969). Five separate sentences of one year, to be served consecutively, or an aggregate of five years in prison was imposed.

It is inappropriate here to comment on the validity or invalidity of the long sentences imposed in these five cases. The sentence was reversed in the three federal cases. Thus, there remain out of the entire survey only two cases, both originating in State courts, where prison terms in excess of six months stand for contempts committed in the presence of the court. Neither of the two is, of course, nearly comparable to the sentence in the present case.

The most significant finding of the case survey, reported in Table B, pp. 54-60 *infra*, is the overwhelming number of cases in which in-court contempts were dealt with without prison terms at all or with quite short periods of confinement. These decisions represent the norm by which the very few, extraordinary penalties over one year can be assessed. Viewed in that perspective, the sentence in the present case looms as a complete aberration.

Finally, this petitioner's sentence should be measured by the analogy made by the dissenting justice in the court below to those very serious offenses under Pennsylvania law that are not punishable by a sentence of as much as 22 years. He noted:

> "Although there is no doubt that the dignity of our courts must be upheld, by the contempt process, if necessary, in a Commonwealth where assault and battery is punishable by a maximum of two years' imprisonment, larceny by a maximum of five, voluntary manslaughter by a maximum of twelve, rape by a maximum of fifteen, and second degree *murder* by a maximum of twenty, a maximum of twenty-two years for interference with the courtroom process and insults to the judge is cruel and unusual." 434 Pa. at 488-489, 255 A.2d at 137 (Emphasis in original).

The cruelty of this 22 year sentence cannot be softened by the device of suggesting that it is merely a string of eleven separate sentences for separate and discrete offenses. Even if the offenses were divisible, the decision by the sentencing judge to make the penalties cumulative would be itself an act of extraordinary cruelty. Moreover, it would be a singular disservice to the trial court to suggest that he, or any other judge, would have imposed a two year sentence on a litigant merely for the verbal insults in each of the first nine counts. On the record, it is impossible to sustain the view that, for purpose of fixing sentence, there had been eleven separate sentences. The trial court selected an obviously mechanical technique for pronouncing sentence. A *per diem* method was used in stating the charges, grouping together all of the incidents of a given day into a single count. Then, with unexamined constancy, the trial judge imposed an identical sentence for each count regardless of the relative seriousness of the charged contumacious behavior. Plainly, in the mind of the sentencing judge, he viewed the alleged contempts of petitioner as having coalesced into a mass. This is quite apparent in the general excoriation

that preceded the statement of the charges and sentences. (Tr. 3219-3221). The result was the enormous 22 year sentence.

The sentence in this case is so far out of line with the "known and acknowledged limits" of punishment for courtroom contempts that it must be stricken. *Weems v. United States*, 217 U.S. 349 (1910). See also *O'Neil v. Vermont*, 144 U.S. 323, 339-340, 364 (1892) (dissenting opinion of Justice Field: "the inhibition [of the Eighth Amendment] is directed against all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged."). The proportion of punishment to crime in this case is so aberrational as to violate "evolving standards of decency." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). And see *State v. Evans*, 73 Idaho 50, 58, 245 P.2d 788, 792 (1952); *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273 (1948); Packer, *Making the Punishment Fit the Crime*, 77 Harv. L. Rev. 1071 (1964).

Petitioner's sentence is cruel and unusual punishment.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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August 15, 1970

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*The assistance of Margery K. Miller, Mitchell L. Bach, and Donald R. Auten in the preparation of this brief is gratefully acknowledged.

TABLE A

State Criminal Contempt Statutes

The following State criminal contempt statutes fix maximum terms of imprisonment:

Alabama: Circuit Court - 5 days. Ala. Code tit. 13, § 9 (1959).

Alaska: six months. Alaska Stat. § 09.50.020 (1962).

Arizona: six months. Ariz. Rev. Stat. Ann. § 13-341 (1956).

Arkansas: 10 days. Ark. Stat. Ann. §34-902 (1962).

Connecticut: six months. Conn. Gen. Stat. Ann. § 51-33 (1960).

Hawaii: Circuit Court - 30 days in summary proceeding; two years after jury trial. Hawaii Rev. Stat. § 729-1 (1968).

Idaho: 5 days. Idaho Code § 7-610 (1969).

Indiana: three months. Ind. Ann. Stat. § 3-906 (1946).

Iowa: six months. Iowa Code § 665.4 (1950).

Kentucky: 30 hours. Ky. Rev. Stat. § 432.260 (1970).

Louisiana: 30 days. La. Rev. Stat. § 13-4611 (1968).

Michigan: 30 days. Mich. Stat. Ann. § 27A.1715 (1962).

Minnesota: six months. Minn. Stat. Ann. § 588.10 (1947).

Mississippi: 30 days. Miss. Code Ann. § 1656 (1957).

Montana: 5 days. Mont. Rev. Codes Ann. § 93-9810 (1964).

Nevada: 25 days. Nev. Rev. Stat. § 22.100 (1963).

New York: 30 days. N.Y. Judiciary Law § 751.1 (1969).

North Carolina: 30 days. N.C. Gen. Stat. § 5-4 (1969).

North Dakota: 30 days. N.D. Cent. Code § 27-10-2 (1960).

Ohio: 10 days. Ohio Rev. Code Ann. § 2705.05 (1954).

Oregon: six months. Ore. Rev. Stat. § 33.020 (1969).

Tennessee: 10 days; special provision for profanity, 24 hours. Tenn. Code Ann. §§ 23-903, 23-907 (1956).

Texas: 3 days. Tex. Rev. Civ. Stat. Ann. arts. 1911, 1955 (1962).

Utah: 30 days. Utah Code Ann. §78-32-10 (1953).

Virginia: 10 days in summary proceedings. Va. Code Ann. § 18.1-295 (1960).

Washington: six months. Wash. Rev. Code § 7.20.020 (1961).

West Virginia: 10 days in summary proceedings. W. Va. Code Ann. § 61-5-26 (1966).

Wisconsin: 30 days. Wis. Stat. Ann. § 256.06 (1957).

Three States have a statutory maximum by virtue of characterizing criminal contempt as a misdemeanor and subject to its general ceiling for all misdemeanors. Calif. Penal Code § 166 (West 1970); State v. Janiec, 25 N.J. Super. 197, 95 A.2d 762 (1962); S.D. Comp. Laws § 16-15-2 (1969).

TABLE B

Appellate Cases Involving In-Court Contempts

The following cases, involving in-court contempt prosecutions, were found by a search of the reported opinions of appellate courts in the past twenty years. The list was gathered from these reports: F.2d, vol. 177 to 425; A.2d, vol. 70 to 266; N.Y.S.2d, vol. 92 to 311; N.E.2d, vol. 90 to 258; S.E.2d, vol. 57 to 173; So.2d, vol. 43 to 236; S.W.2d, vol. 225 to 453; P.2d, vol. 213 to 470; N.W.2d, vol. 40 to 176. The cases are listed in ascending order of severity of punishment.

Scott v. Davis, 328 S.W.2d 394 (Mo. 1959) (lawyer: $10; rev'd)

State v. Zoppi, 72 N.J. Super. 432, 178 A.2d 632 (App. Div. 1962) (lawyer: $25; rev'd)

State v. Zarafu, 35 N.J. Super. 177, 113 A.2d 696 (App. Div. 1955) (litigant: $25; rev'd)

Marino v. Cocuzza, 14 N.J. Super. 16, 81 A.2d 181 (App. Div. 1951) (lawyer: $36; rev'd)

Phelan v. People of the Territory of Guam, 394 F.2d 293 (9th Cir. 1968) (lawyer: $50; rev'd)

Holt v. Commonwealth, 205 Va. 332, 136 S.E.2d 809 (1964), *rev'd*, 381 U.S. 131, 14 L. Ed. 2d 290, 85 S. Ct. 1375 (1965) (2 lawyers: $50; rev'd)

Golden v. Superior Court of Cochise County, 8 Ariz. App. 25, 442 P.2d 562 (1968) (lawyer: $50; rev'd)

U.S. v. Albert, 294 F.2d 879 (6th Cir. 1961) (lawyer: $100; rev'd)

In re Bloom, 423 Pa. 192, 223 A.2d 712 (1966) (lawyer: $100; rev'd)

Blake v. Municipal Court, 144 Cal. App. 2d 131, 300 P. 2d 755 (1st Dist. 2d Div. 1956) (unclear if lawyer or litigant: $100; rev'd)

People v. Aimen, 98 Ill. App. 2d 203, 240 N.E.2d 337 (1968) (lawyer: $200; rev'd)

White v. State, 218 Ga. 290, 127 S.E.2d 668 (1962) (lawyer: $200; rev'd)

Bennett v. Superior Court, 99 Cal. App. 2d 585, 222 P.2d 276 (4th Dist. 1950) (lawyer: $500; rev'd)

Brutkiewicz v. State, 280 Ala. 218, 191 So. 2d 222 (1966) (lawyer: 5 hours and $50; rev'd)

Sullivan v. State, 419 P.2d 559 (Okla. Crim. 1966) (pro se: 1 day and $500; rev'd)

People v. Loughran, 2 Ill. 2d 258, 118 N.E.2d 310 (1954) (lawyer: 3 days; rev'd)

Chula v. Superior Court, 109 Cal. App. 2d 24, 240 P.2d 398 (4th Dist. 1952) (lawyer: 5 days; rev'd)

In re Hallinan, 71 Cal. 2d ___, 459 P.2d 255, 81 Cal. Rptr. 1 (1969) (lawyer: 5 days; rev'd)

In re Henry, 369 Mich. 347, 119 N.W.2d 671 (1963) (lawyer: 5 days; rev'd)

State v. Wingo, 221 Miss. 542, 73 So. 2d 107 (1954) (3 lawyers, 1 litigant: $100 and 10 days, ½ of fine and of jail suspended; rev'd)

U.S. *ex rel.* Robson v. Malone, 412 F.2d 848 (7th Cir. 1969) (spectator: 10 days; vacated)

Parmelee Transporation Co. v. Keeshin (In re Freeman), 292 F.2d 806 (7th Cir. 1961) (lawyer: 10 days; rev'd)

In re Brownlow, 252 A.2d 903 (D.C. App. 1969) (lawyer: 10 days; rev'd)

Parmelee Transporation Co. v. Keeshin (in re McConnell), 294 F.2d 310 (7th Cir. 1961), *rev'd*, 370 U.S. 230 (1962) (lawyer: 30 days, modified to $100; rev'd)

Ex parte Wisdom, 223 Miss. 865, 79 So. 2d 523 (1955) (litigant: 10 days and $50; rev'd)

In re Osborne, 344 F.2d 611 (9th Cir. 1965) (lawyer: 10 days and $200; vacated)

U.S. *ex rel.* Robson v. Malone, 412 F.2d 848 (7th Cir. 1969) (spectator: 30 days; vacated)

U.S. v. Bradt, 294 F.2d 879 (6th Cir. 1961) (lawyer: 30 days; rev'd)

Shibley v. U.S., 236 F.2d 238 (9th Cir. 1956), *cert. denied*, 352 U.S. 873 (1956) (lawyer pro se: 30 days; remanded)

State *ex rel.* Stanton v. Murray, 231 Ind. 223, 108 N.E. 2d 251 (1952) (lawyer: 30 days and $300; rev'd)

Cassidy v. Cassidy, 181 So. 2d 649 (Fla. App. 1966) (litigant: 6 months; remanded, to be no more than 2 months)

U.S. v. Panico, 308 F.2d 125 (2d Cir. 1962), *vacated*, 375 U.S. 29 (1963) (litigant: 15 months; vacated)

Ash v. State, 93 Okla. Crim. 125, 225 P.2d 816 (1950) (lawyer: $10; aff'd)

In re DuBoyce, 241 F.2d 855 (3rd Cir. 1957) (pro se: $50 and 15 days, jail suspended; aff'd)

Whiteside v. State, 148 Conn. 77, 167 A.2d 450 (1961) (litigant: $100; aff'd)

Young v. State, 275 P.2d 358 (Okla. Crim. 1954) (2 litigants: $100; aff'd)

Stern v. Chandler, 153 Me. 62, 134 A.2d 550 (1957) (lawyer: $100; aff'd)

In re Gates, 248 A.2d 671 (D.C. App. 1968) (lawyer: $100; aff'd)

O'Brien v. State, 261 Wis. 570, 53 N.W.2d 534 (1952) (lawyer: $100; aff'd)

Appeal of Levine, 372 Pa. 612, 95 A.2d 222, *cert. denied*, 346 U.S. 858 (1953) (lawyer: $100 and costs; aff'd)

Hayden v. Helfand, 28 App. Div. 2d 567, 280 N.Y.S.2d 420 (1967) (lawyer: $150; aff'd)

In re Clawans, 69 N.J. Super. 373, 174 A.2d 367 (App. Div. 1961), *cert. denied*, 370 U.S. 905 (1962) (lawyer: $200; aff'd)

State v. Jones, 105 N.J. Super. 493, 253 A.2d 193 (L. Div. 1969) (litigant: 30 days; modified to $200)

Champion v. State, 456 P.2d 571 (Okla. Crim. 1969) (lawyer: $250; aff'd)

Sala v. Shapiro, 18 App. Div. 2d 843, 238 N.Y.S.2d 53 (1963) (unclear if lawyer or litigant: $250 and 10 days; modified to $250)

Gibbons v. U.S. District Court for the District of Nevada, 416 F.2d 14 (9th Cir. 1969), *cert. denied*, 396 U.S. 1041 (1970) (lawyer: $500; aff'd)

Ray v. Huddleston, 372 F.2d 61 (6th Cir. 1964) (litigant: 6 hours; aff'd)

Offutt v. U.S., 247 F.2d 88 (D.C. Cir.), *cert. denied*, 355 U.S. 856 (1957) (lawyer: 10 days; modified to 6 hours)

Guatreaux v. Gautreaux, 220 La. 564, 57 So. 2d 188 (1952) (lawyer: 2 days and $200; modified to 1 day and $100)

Spencer v. Dixon, 248 La. 604, 181 So. 2d 41 (1965) (lawyer: 1 day and $100) (contempt in appellate court)

Borden v. Tobias, 42 Misc. 2d 1069, 249 N.Y.S.2d 891 (Sup. Ct. 1964) (lawyer: $50 and 2 days; review denied)

In re Ciraolo, 70 Cal. 2d 389, 450 P.2d 241, 74 Cal. Rptr. 865 (1969) (lawyer: 3 days and $200; aff'd)

In re Ellis, 264 A.2d 300 (D.C. App. 1970) (pro se: 5 days; aff'd)

Garner v. Amsler, 238 Ark. 34, 377 S.W.2d 872 (1964) (lawyer: 5 days and $250; aff'd)

State v. Alexander, 257 A.2d 778 (Me. 1969), *cert. denied*, 397 U.S. 924 (1970) (lawyer: 5 days and $500; aff'd)

Ex parte Dancer, 171 Tex. Crim. 381, 350 S.W.2d 544 (1961) (lawyer: 24 days and $925; modified to 9 days and $925)

Moity v. Mahfouz, 137 So. 2d 513 (La. App. 1961) (unclear if lawyer or litigant: 10 days; review denied)

In re Young, 325 P.2d 85 (Okla. Crim. 1958) (lawyer: 10 days; aff'd)

State v. Caffrey, 70 Wash. 2d 120, 422 P.2d 307 (1966) (lawyer: 10 days; aff'd)

State v. Gussman, 34 N.J. Super. 408, 112 A.2d 565 (App. Div. 1955) (litigant: 10 days; aff'd)

McCraw v. Adcox, 217 Tenn. 591, 399 S.W.2d 753 (1966) (pro se: 10 days and $50; aff'd)

Gautreaux v. Gautreaux, 225 La. 254, 72 So. 2d 497 (1954) (lawyer: 10 days and $200; aff'd)

Garner v. Amsler, 238 Ark. 34, 377 S.W.2d 872 (1964) (lawyer: 10 days and $250; aff'd)

Comstock v. U.S., 419 F.2d 1128 (9th Cir. 1969) (litigant: 15 days; aff'd)

Watson v. Holifield, 229 Miss. 27, 89 So. 2d 924 (1956) (sheriff: 15 days and $100; review denied)

U.S. v. Galante, 298 F.2d 72 (2d Cir. 1962 (2 litigants: 20 days; aff'd)

Sachse v. Sachse, 102 So. 2d 300 (Fla. App. 1958) (lawyer: 20 days; aff'd)

In re Katz, 309 N.Y.S.2d 76 (Sup. Ct. 1970) (spectator: 30 days; review denied)

U.S. v. Sacher, 182 F.2d 416 (2d Cir. 1950), *aff'd*, 343 U.S. 1 (1952) (lawyer: 1 month; aff'd)

Johnson v. State, 233 So. 2d 116 (Miss. 1970) (litigant: 4 months; modified to 1 month)

McCallister v. McCallister, 95 N.J. Super. 429, 231 A.2d 394 (App. Div. 1967) (pro se: 1 month, 11 months probation; aff'd)

Garland v. State, 101 Ga. App. 395, 114 S.E. 2d 176 (1960) (lawyer: 40 days; aff'd)

Sarner v. Sarner, 28 N.J. 519, 147 A.2d 244, *cert. denied*, 359 U.S. 533 (1959) (litigant: 60 days; aff'd)

U.S. v. Schiffer, 351 F.2d 91 (6th Cir. 1965), *cert. denied*, 384 U.S. 1003 (1966) (lawyer: 60 days and $1000, fine later stricken; aff'd)

MacInnis v. U.S., 191 F.2d 157 (9th Cir. 1951), *cert. denied*, 342 U.S. 953 (1952) (lawyer: 3 months; aff'd)

Rollerson v. U.S., 343 F.2d 269 (D.C. Cir. 1964) (litigant: 1 year; remanded) (on remand—90 days)

U.S. v. Sacher, 182 F.2d 416 (2d Cir. 1950), *aff'd*, 343 U.S. 1 (1952) (2 lawyers: 4 months; aff'd)

U.S. v. Sacher, 182 F.2d 416 (2d Cir. 1950), *aff'd*, 343 U.S. 1 (1952) (2 lawyers and 1 pro se: 6 months; aff'd)

Hallinan v. U.S., 182 F.2d 880 (9th Cir. 1950), *cert. denied*, 341 U.S. 952 (1951) (lawyer: 6 months; aff'd)

Robles v. U.S., 279 F.2d 401 (9th Cir. 1960), *cert. denied*, 365 U.S. 836 (1961) (pro se: 6 months; aff'd)

State v. Newton, 467 P.2d 978 (Ore. App. 1970) (litigant: 6 months; aff'd)

Taylor v. Gladden, 232 Ore. 599, 377 P.2d 14 (1962) (litigant: 6 months; aff'd)

State v. Watson, 182 Neb. 692, 157 N.W.2d 156 (1968) (litigant: 6 months; aff'd)

Mirra v. U.S., 402 F.2d 888 (2d Cir. 1968) (litigant: one year; reduced to 6 months)

DeStefano v. Woods, 382 F.2d 557 (7th Cir. 1967), *aff'd*, 392 U.S. 631 (1968) (pro se: one year and $2000; aff'd)

Commonwealth v. Mayberry, 435 Pa. 290, 255 A.2d 548 (1969) (pro se: 5 years; aff'd)

In the following cases, the penalty imposed by the trial court was not stated in the opinion of the appellate court:

In re Logan, 52 N.J. 475, 246 A.2d 441 (1968) (lawyer: "fined"; rev'd)

Kasson v. Hughes, 390 F.2d 183 (3rd Cir. 1968) (lawyer: "fined"; rev'd)

Fawick Airflex Co. v. United Electrical R. & M. Wkrs., 60 Ohio L. Abs. 451, 101 N.E.2d 797 (Ohio App. 1950) (2 litigants: "fine and sentence"; aff'd)

In re Burns, 19 Mich. App. 525, 173 N.W.2d 1 (1969) (lawyer: not given; aff'd)

Boatright v. State, 106 Ga. App. 801, 128 S.E.2d 559 (1962) (lawyer: not given; aff'd)

Crudup v. State, 218 Ga. 819, 130 S.E.2d 733, *cert. denied*, 375 U.S. 829 (1963) (lawyer: not given; aff'd)

Banks v. Markowitz, 4 App. Div. 2d 1022, 168 N.Y.S.2d 852 (1957) (litigant: not given; aff'd)

Lewis v. Rice, 261 S.W.2d 804 (Ky. App. 1953) (lawyer: not given; writ of prohibition refused)